IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.383 OF 1999.

The State of Maharasthra : Appellant.

versus

Vasantpuri Doulatpuri Gosavi

and ors. : Respondents.

Mr.S.N.Gawade, AGP, for the State.

Mr.K.S.Patil i/by P.N.Joshi for respondents.

CORAM : D.G.DESHPANDE,J.

DATED : 17th February 2005.

ORAL ORDER

1. Heard the learned AGP for the State and the advocate for the respondents/claimants. This appeal is filed by the State challenging the enhancement of compensation awarded to the respondents by the lower Court (Shri.B.M.Bhoge) by a common judgment in Land Reference Nos. 138 of 1989 and 139 of 1989. Notification under Section 4 of the said Act was dated 9/8/1984.

The lands situated at village Vadner Bhairav, Tal. Chandwad, Dist. Nashik were acquired for construction of Ozarkhed Left Bank Canal. The compensation awarded by the SLAO was accepted under protest and, then the claimants filed reference under Section 18 of the Land Acquisition Act.

2. The Court below relied upon its own earlier order, Exhibit 27 in a Group of References bearing L.R.Nos.28/88, 43/88, 50/88, 51/88, 52/88, and 53/88. They were the cases from the same village Vadner Bhairav and acquired for the same purpose. In that Group of References the Court awarded compensation at Rs.50,000/- for Jirayat Land and Rs.70,000/- for Bagayat Land. Therefore, placing reliance on that order, same amount of compensation is granted in this case and hence this appeal by the State.

3. In order to have clarity about the earlier orders it is to be noted here that Exhibit 27 is an order in Land Reference No.50/88 with Land Reference Nos.52/88 and 53/88 delivered by the Joint District Judge, Nashik [Shri

B.M.Bhoge] on 29th June 1995 in **Gyanu Bhika Mogal & ors. vs. The SLAO Nashik.**

. Exhibit 20 is also an order of the same Court i.e. The Joint District Judge, Nashik [Shri B.M.Bhoge] dated 30th June, 1995 in Land Reference No.43 of 1988 with Land Reference No.51 of 1988 in **Punja Sakharam Aher & Anr. vs. The SLAO, Nashik.**

. In the present appeal arising out of Reference i.e. Land Reference No.138 of 1989 there is a reference to his judgment (Exhibit 27).

4. This judgment Exhibit 27 therefore covers three Land References. There is only one para devoted by the Court in Exhibit 27 to give reasoning and it is para No.5 which is as under:-

> "I have already stated that the lands of other persons from the same village are acquired by the Government for the construction of Ozarkhed right bank canal. Those references are decided by this Court. The present claimants are

relying upon the Judgment delivered by this Court, the award and the rate. The learned advocate for claimants Shri Baste fairly considered that though the oral evidence for instances is given, this Court can refer the Judgment delivered on which its copy is filed at Exhibit 25 and give the same rate to the present claimants. This Court has considered potentiality of the land and other facilities in deciding the references and have come to the conclusion that the Jirayat land group No.II and for irrigated land one and half time which is granted to the Jirayat. I have given the calculation with area. The calculation as per the Judgment delivered by this Court is as under :-"

. Thereafter the Court referred to **L.R.No.50/88** and the Court stated ;

"In this reference, land 1H. 12 R. is acquired. The land is classified under group ‘irrigated’. The Court has granted compensation at the rate of Rs.1,20,000/-

per hectare, with this rate, the present claimants will be entitled to receive Rs.1,34,400/-.

. Thereafter the Court referred to **L.R.No.52/88** and stated ;

"This Court treated some land as Jirayat Class-III and awarded at the rate of Rs.65,000/- per hectare and the same rate is to be given to the claimant in this reference. His land Gat No.2114 to the extent of 50 R. is acquired. As per the rate given in Judgment in L.R.No.28/88, decided on 27.3.95, the market value will be Rs.32,500/- per hectare."

. Then the Court referred to **L.R.No.53/88** and
stated;

"The land of the claimant in this reference is treated as Jirayat Class-II. This Court has awarded Rs.65,000/- per hectare for such land in the Judgment referred to in the above paragraph. The

> land admeasuring 69 R. from Gat No.2115 is acquired. With this rate, the market value will have to be granted at the rate of Rs.44,850/- per hectare."

Then in para 12 the Court has stated that,

> "In this case, the land is being treated as Bagayat land. The market value is being assessed on the basis of previous judgment. I have given details as to why the land is being treated as Bagayat."

Then in para 13 it is stated that;

> "In conclusion, I hold that this Court has assessed the compensation for the lands considering its fertility, potentiality and other aspects."

5. So far as Exhibit 20 is concerned, as stated above, it is a judgment in Two References i.e. L.R.Nos.43/88 and 51/88. The judgment is of 30th June 1995. In the reasoning part the same Judge Shri.B.M.Bhoge has stated;

" I have already stated that market value of the acquired land in these references is being assessed on the basis of previous judgment of this Court."

. So it appears from this policy that Shri.B.M.Bhoge, who was the then Joint District Judge, Nashik, passed one judgment in one land reference and then went on relying upon his own judgment immediately within next few days, because he could legally rely upon his earlier judgment. Now the earlier judgment referred to by him in Para 5 of Exhibit 20 is dated 27.3.85. It is in L.R.No.28/88. It appears that two judgments almost simultaneously given were being used by him as reliance.

. Then in para 6, while considering whether the lands acquired should be treated as Bagayat lands ?, he again referred that, he has already stated that the SLAO has categorized these lands as Jirayat land class-II.

5. The method adopted by the trial Judge (Shri. B.M.Bhoge) in awarding the compensation

is absolutely wrong. He goes on relying on his own judgment in group of References delivered on different dates as the basis for awarding compensation as claimed and as prayed by the claimants. He does not try to find out as to what are the similarities between the lands acquired in particular case with the lands acquired in the earlier matters decided by him. He does not give any reasoning, why and on what basis he is considering the particular piece of land as Bagayat land and particular piece of land as Jirayat land. He does not give any reason, at least in these two judgments (Exhibits 20 and 27), why he fixed price at Rs.50,000/- per hectare for Jirayat land and Rs.75,000/- per hectare for Bagayat land.

6. Now the counsel for the claimant is again relying upon those two judgments (Exhibits 20 and 27) for the purpose of justification of this present order which is also passed by same Judge (Shri B.M.Bhoge). Here also without giving any reasons and without stating that he himself passed those earlier orders within a short span with intervention of couple of days, has gone on relying upon those orders for fixing the

compensation without absolutely giving any reason much less sound and convincing reason. It is true that earlier judgments or orders can be relied upon for fixing the compensation. But Exhibits 20 and 27, upon which reliance is placed by the claimants, are perverse judgments though they are not challenged in appeal and I cannot disturb them in this appeal But at any rate those judgments cannot be made basis for awarding compensation to the claimants in the present case. Therefore, this impugned order as challenged by the State is devoid of any merit. It is fully perverse. It is on the basis of modus operandi invented by the Judge. It is without any reasoning; without any classification. And therefore, this order cannot be upheld.

7. Counsel for the claimant relied upon judgment of the Supreme Court reported in **(2003) 10 SCC 529 [Bhim Singh and others v. State of Haryana and another]** in support of his contention that when compensation is already fixed by the High Court in earlier proceedings and when in one such proceeding Supreme Court already approved the rate fixed, then the best method would be to

look at the earlier judgments and awards. There cannot be any dispute about the proposition laid down by the Supreme Court. But the question is, Should earlier judgments to be blindly accepted?, as has been done by Shri.B.M.Bhoge, the then Joint District Judge, Nashik and, my answer is, in the negative. Those judgments are his own creations and for all these reasons and in view of my findings about the present judgment and Exhibits 20 and 27, absolutely no reliance can be placed on those judgments.

8. It is now clear that Mr.Bhoge, the then Joint District Judge, Nashik, awarded compensation as demanded by the claimants i.e. Rs.50,000/- per hectare for Jirayat land and Rs.75,000/- per hectare for Bagayat land without absolutely any basis, without comparison of the lands with the earlier lands acquired, without deciding independently whether these lands could fetch price fixed by him, without considering what was the market value of the lands at the time of acquisition and without even finding out whether the notification in respect of all acquisition proceedings was the same. This judgment cannot be supported and upheld. Since

there is no rational in fixing compensation as awarded by Shri Bhoge, the then Joint District Judge, Nashik, the enhancement granted by him to the respondents/claimants is without any basis and without any substance. Therefore, the appeal of the State has got to be allowed and the order of enhancement is required to be quashed. Hence the order:-

:ORDER:

The appeal is allowed.

The order of enhancement of compensation passed by Shri B.M.Bhoge, the then Joint District Judge, Nashik in the case of L.A.R.No.138 of 1989 of the respondents is quashed and set aside.

The claimants/resondents will be entitled to the compensation that was fixed by the SLAO.

If during pendency of the appeal, the State has deposited the amount and the

claimants have withdrawn it, they will return the amount to the State within six weeks from today failing which the claimants will liable to pay interest at the rate of 12% from the date of withdrawal till payment.

No order as to costs.

[D.G.DESHPANDE]

17/02/2005 JUDGE.